



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 14-02160
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster Esquire, Department Counsel
For Applicant: *Pro se*

02/10/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 12, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 12, 2014, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR. He submitted a notarized, written response to the SOR allegations dated October 9, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on November 13, 2014. Applicant received the FORM on November 21, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on February 3, 2015. The Government submitted six exhibits, which have been marked as Items 1-6 and admitted into the record. Applicant's response to the SOR has been marked as Item 3, and the SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.c of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.d of the SOR.¹ He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 53 years old, works as an electrical service engineer and safety instructor for a DOD contractor. Applicant began working for his employer in 1984 at age 22. His manager of 10 years describes him as an exemplary employee and valued member of their department. Applicant is reliable and dependable. He has a strong work ethic and has integrity. The president of his union describes him as a dedicated and loyal employee. Both indicate knowledge of recent hardships and tragedy in Applicant's life and his continued good work performance during this time.²

Applicant graduated from high school in 1980. At the time of graduation, he received a vocational technical certificate. He served in the Air National Guard inactive reserves from November 1980 until November 1986, when he received an honorable discharge. Applicant married in April 1984. His wife died in 2009. Applicant has two sons, ages 29 and 30. Outside of the financial problems identified in the SOR, Applicant

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 3; Item 4.

does not have any negative information relevant to the determination of his ability to protect classified information.³

For 15 years, Applicant's wife suffered from a debilitating disease which ultimately resulted in her death in 2009. Because of this disease, Applicant was unable to obtain life insurance for her. Her funeral expenses totaled approximately \$10,000. He also incurred medical bills for her treatment. After her death, her Social Security benefit ceased and he assumed responsibility for her car payment and other debts.⁴

In March 2010, a river near his home overflowed, causing serious water damage to his home. He did not receive financial assistance from the Federal Emergency Management Administration. He made the repairs from his funds.⁵

Applicant owns a two-family home. He rents one unit. His tenants stopped paying the rent, then moved, leaving significant damage to the property. He repaired the damages, but has been unable to rent the apartment for the last two years. The rental income helped pay his mortgage.⁶

Applicant has been diagnosed with type two diabetes. In January 2014, doctors diagnosed Applicant with a non-alcohol based cirrhosis of the liver, caused by an undetected liver disease. With his medical care and treatment, Applicant advises that his health is improving.⁷

Applicant's income from his employment and his current monthly expenses are unknown. Outside of the debts listed in the SOR, the credit reports dated November 16, 2013 and July 28, 2014 reflect that he does not have any other unpaid debts. The credit reports show that he paid many accounts as required and that he resolved two delinquent accounts. The record lacks any evidence that he received financial counseling.⁸

SOR allegation 1.a concerns Applicant's mortgage, which is past-due in the amount of \$14,849. On September 30, 2014, Applicant applied for a hardship loan from his 401k account. All documentation for the loan was required to be submitted by October 30, 2014. Applicant will receive sufficient funds from this loan to bring his

³Item 3.

⁴Item 3.

⁵Item 3.

⁶Item 3.

⁷Item 3.

⁸Item 5; Item 6.

mortgage current. The July 2014 credit report reflects that his mortgage loan was modified under a federal government plan.⁹

The debt in SOR allegation 1.b (\$1,516) relates to a credit card debt. Applicant negotiated a payment plan with the creditor in September 2014. He agreed to pay \$100 a month beginning September 30, 2014 through an automatic withdrawal from his account until the debt is paid. He verified the first payment.¹⁰

The SOR alleges that Applicant owes \$8,931 (1.c) on a collection account. The creditor obtained a judgment against Applicant in August 2012. Including interest, court costs, and attorney fees, Applicant owed \$14,701. Applicant began paying counsel for the creditor \$300 a month in April 2012 and has made this payment every month since. As of September 26, 2014, he owed \$6,900 on this debt.¹¹

SOR debt 1.d concerns an unpaid \$280 medical bill. Applicant contacted this creditor and paid the bill in October 2014.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

⁹Item 3; Item 5.

¹⁰Item 3.

¹¹Item 3.

¹²Item 3.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s handling of his finances allowed several accounts to become delinquent, including his mortgage and credit accounts. He also allowed one debt to be

reduced to a judgment. Most of the debts had not been resolved at the time the SOR was issued. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems arose from multiple events including the loss of household income when his wife died, her funeral expenses, a flood from a natural disaster, and the loss of rental income. All of these incidents are factors beyond his control. Applicant absorbed many of the unanticipated expenses, such as his wife's funeral expenses and the cost of repairs to his house from the flood and his tenants. He, however, could not manage all his debts immediately. He paid two past-due debts not listed on the SOR and has slowly worked to resolve his other debts. He has paid towards one of his largest debts since 2012. He has acted responsibly under the circumstances. AG ¶ 26(b) applies.

While Applicant has not participated in financial counseling, the evidence of record reflects that he has taken control of his debts. His credit reports show that his finances are under control as he has not incurred any new debts. Applicant initiated a "good-faith" effort to resolve his debts in SOR allegations 1.b through 1.d. He paid the medical bill, and he has payment plans in place for the other two debts. As for his past-due mortgage, he has applied for a loan from his retirement account to bring his mortgage current, and given his payment history, there is every reason to believe once the loan was approved, he applied the money to his mortgage debt. AG ¶¶ 26(c) and 26(d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant accumulated debt due to circumstances largely beyond his control, including his wife's death, lost rental income, and flood damage. (See AG ¶ 2(a)(2).) Applicant has slowly worked to pay unanticipated expenses related to these events. He began paying one of his SOR debts in April 2012 and continues to pay this debt. He paid one SOR debt, and his credit reports show that he paid two other debts before the issuance of the SOR. He has established a meaningful track record for debt resolution. He developed a plan to resolve his two other debts. He is paying one debt under a payment plan, and he has requested funds from his 401k account to resolve his mortgage arrears. He is not required to be debt free to hold a security clearance, but he must manage his finances. He is respected by his management for his work performance. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) In reviewing all the evidence presented in this record and considering that his monthly income and expenses are not known, I find that the evidence of record is sufficient to establish that Applicant has mitigated any security concerns raised because of his finances.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge